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2 go to the Commission and say would you resolve these,
3 because clearly we have the authority to do some of that, we
4 still maintain some leverage over incumbent local exchange
5 companies and have a way to exert some of that. So at what
6 point does Brooks reach the end of their rope and come to
7 the Commission and say we need help?

8 WITNESS CADIEUX: I would be happy to address
9 that.

10 CHAIRMAN GRAVES: I would be interested in
11 your answer.

12 And you might just spell your name for the
13 record.

14 THE COURT REPORTER: I know him.

15 CHAIRMAN GRAVES: Oh, you've got it? Okay.

16 WITNESS CADIEUX: I am not a - - I should
17 make it clear, though. I am not an attorney of record at
18 this point.

19 CHAIRMAN GRAVES: Well, I understand. And I
20 meant to say that you have been an attorney here before
21 representing Brooks in other matters. I don't mean to imply
22 in this case, because I understand you have testified.

23 VICE CHAIRMAN ANTHONY: You have appeared - -

24 WITNESS CADIEUX: As a witness.

25 VICE CHAIRMAN ANTHONY: - - as a witness in
this proceeding?

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2 WITNESS CADIEUX: That's correct.

3 VICE CHAIRMAN ANTHONY: All right.

4 CHAIRMAN GRAVES: And I will acknowledge that
5 if anybody has a problem with this, I will be happy to - -
6 we will make whatever amends we have to to allow people to
7 make any additional comments that they wish to make in
8 reference to anything that Mr. Cadieux might say. I'm just
9 honestly trying to get at the heart of what I think is a
10 policy issue and not a particularly fact specific item.

11 WITNESS CADIEUX: There is really a couple of
12 things that bear on this. I mean, first of all, I have to
13 assure you, the Commission, I wish - - I wish you could live
14 in my shoes for a few days and you would understand, at
15 least with respect to Brooks Fiber, any suggestion that we
16 are slow rolling or delaying is just - - if you said that to
17 somebody at Brooks Fiber, you would be laughed out of the
18 building. Because as a new entrant without an established
19 broad base of revenue in a very capital intensive business
20 that has gone out, been pretty successful in the capital
21 markets getting capital but then deploying that all up on
22 the front end and the pressure on trying to get your
23 networks up and running, I mean, the pressure is almost
24 insane in terms of trying to get these things completed so
25 you can begin to provide service. So the truth is if there
is any implication or suggestion by any of the parties that

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2 there is, you know, slow rolling on our part, that is just
3 complete - - that is not reality.

4 CHAIRMAN GRAVES: I understand.

5 WITNESS CADIEUX: Having said that, I will
6 grant you and admit, I mean, the collocation is a technical
7 process. It is a construction process. It is something
8 that is not, at least by Southwestern Bell in terms of
9 physical collocation, hasn't been done before. And any
10 process like that, I mean, it is not going to happen over
11 night. It is going to take time. And we understand that.
12 And that is why we started filing our physical collocation
13 applications as early as last June.

14 One thing I do want to correct, because Mr.
15 Gist may have misspoke, we do have collocation agreements
16 signed. We have to have those signed in order to get
17 Southwestern Bell to begin the construction process and then
18 access to the cage and put our own equipment in. What we
19 don't have is we don't have any of the actual facilities
20 completed at this point.

21 CHAIRMAN GRAVES: Sure.

22 WITNESS CADIEUX: So, I mean, there is - -
23 there certainly is time required. There is a process. You
24 file an application. A price quote comes back. And there
25 is a certain amount of time, I think it is 35 days, to
provide a price quote, the company then has to decide

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2 whether to send in a check for 50 percent.

3 CHAIRMAN GRAVES: And these time lines are
4 set by whom?

5 WITNESS CADIEUX: Southwestern Bell in a - -
6 Since they have a collocation technical publication, they're
7 not to my knowledge - - Well, Southwestern Bell does not
8 have a physical collocation tariff. And there are no, to my
9 knowledge no, either state or federal rules that specify
10 these timings.

11 CHAIRMAN GRAVES: Okay. That is fine.

12 WITNESS CADIEUX: So you get the price quote
13 in. You decide whether to pay 50 percent of the price quote
14 and get Southwestern Bell started on construction. If you
15 do that, you pay the amount. Of course, all you have is a
16 price estimate from them. And if you want them to begin
17 work, you have got to pay the money.

18 So what we have done in each instance is we
19 have paid the 50 percent and paid it under protest and said,
20 look, we don't know. We have had no ability at this point
21 to determine whether this price is a reasonable price or
22 not, but we have to get into the market and there is a long
23 lead time on collocation, we have got to get you started.
24 So the check goes in. You get a response back with a time
25 interval to do the construction. It might be 120 days, it
might be 90 days, it might be 150 days, it depends on the

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2 particular central office and what the situation is there,
3 how much space you are asking for. So there is an inherent
4 time line. Now - -

5 CHAIRMAN GRAVES: Now who do you protest the
6 price quote to when you say you pay it under protest?

7 WITNESS CADIEUX: Well, we - - we - - we - -
8 we - - we protested in the sense in the first instance in a
9 letter that goes back with the check just to reserve our
10 legal rights. Now - -

11 CHAIRMAN GRAVES: Where do you go to get that
12 adjudicated?

13 WITNESS CADIEUX: Well, we would - - The
14 situation we see as we interpret it right now is collocation
15 pricing, the ultimate reasonableness of that, if it is going
16 to be disputed by Brooks, our view right now is it is a
17 dispute resolution item under the interconnection agreement.
18 So our first effort - - You need to understand also that the
19 prices, we get a price quote, we pay 50 percent, the
20 construction starts. You get down towards the end of
21 construction, we have to pay the other 50 percent of the
22 quote to get access to the cage space and begin to do our
23 work. But it is still an estimate. I mean, all the
24 returns, in effect, are not in yet in terms of what the
25 actual costs incurred are, so we don't have a final price
back. Once we get that final price on each of these

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2 collocations as they become complete, we will take a look at
3 them and Brooks will have to make an evaluation whether, you
4 know, like any other litigation-type evaluation. I'm - -

5 CHAIRMAN GRAVES: Where do you go to litigate
6 those?

7 WITNESS CADIEUX: Well, under our
8 interconnection agreement, we have the alternative - - in
9 Oklahoma and Arkansas we have the alternative choice of
10 tossing it off to a commercial arbitrator.

11 CHAIRMAN GRAVES: Right.

12 WITNESS CADIEUX: Or bringing it to any other
13 administrative agency or court that has jurisdiction.

14 CHAIRMAN GRAVES: Is that the Commission?

15 WITNESS CADIEUX: My view, I haven't
16 researched this thoroughly, but my view today would be, yes,
17 the Oklahoma Commission would be the first stop.

18 CHAIRMAN GRAVES: So you are not yet - - You
19 haven't made the determination yet that you want to protest
20 those to the Commission, is what you are telling me?

21 WITNESS CADIEUX: We can't, because we don't
22 have the final price.

23 CHAIRMAN GRAVES: I understand. I
24 understand.

25 WITNESS CADIEUX: We are heavily inclined
that way, because on the face of it, the price quotes we

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2 have gotten back we believe are excessive.

3 CHAIRMAN GRAVES: So you don't feel like
4 though that just given on the base of the price quote that
5 you could go to the Commission and say, look, this is
6 outrageous on its face, they're not dealing in good faith?

7 WITNESS CADIEUX: That might be a theoretical
8 - - Theoretically, we might have had that opportunity. But
9 there a - - that - - I mean, this is a judgment we make
10 every day in terms of will doing that, you know, we have
11 been pushing the process, pushing the process.

12 CHAIRMAN GRAVES: Right.

13 WITNESS CADIEUX: And, you know, we are
14 getting - - we think we are getting close on some of these
15 collocations. And, you know, we think the process may be
16 running a little smoother now that we have gone through this
17 first batch and done this for the first time. But it is
18 always the judgment do you muddy the waters from the
19 business standpoint and shoot yourself in the foot by going
20 to the regulator at any point in time, or incrementally are
21 you better, you know, pushing - - pushing the process, you
22 know, a little further to completion.

23 CHAIRMAN GRAVES: Right. And so what I have
24 been hearing all along is a very real sense of frustration
25 that we just can't get there because the incumbent is not
working with us. And my concern is, if there is not an

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2 ability to provide relief if there is some egregious
3 behavior, then we need to provide some relief. But if there
4 is a business decision that's being made not to pursue an
5 option, where does that come into the overall process that,
6 well, it is just kind of a value judgment that I make every
7 day in a business setting. And sometimes I err on the side
8 of being aggressive, other times I'm going to lay back a
9 little bit and kind of see how it shakes out, because it may
10 work smoother once we get through one, or two or three of
11 these.

12 WITNESS CADIEUX: There is a couple of things
13 that I want to respond to. I'm losing the track here.

14 Well, and the second part of it, I think you
15 are alluding to the resell side of it. Is that what you are
16 - - in terms of why not get in on the resell business?

17 CHAIRMAN GRAVES: No. No. No. No. Not at
18 all. I'm just saying that we have heard from several people
19 here that there is - - the suspicion is that the problems
20 and the timing that they have run into in terms of either
21 negotiating these things or actually once you have got an
22 interconnection agreement kind of physically going through
23 settling out of these location problems, and so forth, that
24 there is an unspoken sense out there that there is some sort
25 of game playing going on that because they're the incumbent
they're trying to keep me out, they're just going slow,

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2 okay?

3 Now and my question is, if that is really
4 going on and you believe that there is an option here at the
5 Commission, why aren't people coming in here saying, look,
6 let's deal with it. What I thought I heard you say was
7 that, well, there is a business choice that sometimes needs
8 to be made to say do I go stir up the waters at the
9 Commission and get the regulators mad and potentially make
10 them so angry that they just stop on everything else and
11 force me to go there every step of the way, or is this thing
12 going to kind of work out and run smoother and on a relative
13 basis I'm actually better off kind of negotiating it
14 through. And that is what I'm trying to get my hands at,
15 because if that is the business decision that is being made,
16 we don't have a place, we don't have a role to play. If
17 there is not the ability to effect some cooperation and we
18 can't incent people to the proper behavior because we don't
19 have a mechanism or we haven't stated that we think we have
20 the authority and we ought to do it, then we need to kind of
21 clarify that. But I'm concerned that people may be out
22 there thinking they don't have the ability to go - - they
23 don't have any other alternatives other than to just kind of
24 sit there and take whatever comes across the table.

25 WITNESS CADIEUX: I want to be really clear
about this. I mean, to the extent there is a suggestion

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2 that Southwestern Bell is just flat out not working with
3 us, that is not the case.

4 CHAIRMAN GRAVES: Okay. All right.

5 WITNESS CADIEUX: You know, I'm sure their
6 view of it is, well, Brooks you should have been more
7 precise in terms of the type of information you provided,
8 and, you know, so they think it is our fault on
9 collocation. I mean, they're working with us. We have
10 found the process - - You know, now looking back, having
11 gone through the first batch over these last six to nine
12 months, we have found the process, at least as it initially
13 worked, as very cumbersome because it was very
14 non-interactive in our view. And, you know, I think on - -
15 my sense of it is from talking to our collocation people,
16 we think that it is getting better on the new applications
17 we are putting in.

18 CHAIRMAN GRAVES: Because there is a better
19 understanding of what is necessary?

20 WITNESS CADIEUX: There is better
21 understanding of what is necessary. And we learned, to some
22 extent, we learned the game. You know, we understand,
23 okay, if we - - you know, if we want X, we better be very,
24 very specific about X. And we didn't - - You know, that
25 wasn't made clear to us, wasn't apparent to us in some
situations.

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2 CHAIRMAN GRAVES: It is kind of like dealing
3 with lawyers. They only answer the question asked?

4 WITNESS CADIEUX: Well, that is fair. But -
5 - I missed another piece on this. But the point is, we are
6 - - I mean, I want to try to make this clear. On the one
7 hand you may say, well, it sounds like there is all sorts of
8 problems. Well, we think there are some problems. But why
9 are you hearing about this? I mean, absent this petition,
10 and absent a Southwestern Bell application to be getting
11 into the interLATA market today, the judgment I think from
12 Brooks probably would be, look, we have spent more time in
13 the process than we thought was necessary. We think in
14 large part that is not our fault. We think the prices are
15 excessive. We have a business imperative. A facility-based
16 carrier, a new entrant facility-based carrier, is under
17 unique financial business pressure. So you have got to get
18 into the market. We have to make decisions all the time.
19 We would love to arbitrate some of these cases. But if we
20 had arbitrated - - I mean, a good example is where Brooks is
21 right now. We signed an interconnection agreement around
22 Labor Day. And we are in this process. We started our
23 switch up in January. We started to turn up a little bit of
24 service. But getting these collocations done is a critical
25 element because of our fiber ring network to get out and get
a broader reach to customers.

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2 If we had arbitrated, and fought, and come to
3 the regulator in the prescribed - - you know, because we
4 didn't think the prices were reasonable, my guess is we
5 would be - - and this is exactly what I have - - you know, I
6 pat myself on the back, because last spring everybody said
7 nine months, it is just nine months and you are done. And I
8 said, whoa, nine months until you get an arbitration
9 decision. How long until you actually have an
10 interconnection agreement that you can provide service? In
11 fact, you can start connecting your networks and go through
12 the process and then maybe be able to provide service four
13 or five months down the record. And if we had chosen that
14 route here in Oklahoma and been in the same situation that
15 AT&T is in terms of procedurally, you know, we would be - -
16 the financial picture for us in Oklahoma would be very
17 bleak.

18 CHAIRMAN GRAVES: But that speaks volumes for
19 the relative business plans and the relative market
20 position, if you will, of the two companies, and that you
21 made a business decision based upon what worked for you all
22 versus what might have worked for someone else.

23 WITNESS CADIEUX: I understand. But to us it
24 is not a business decision. It is a business necessity and
25 business imperative.

COMMISSIONER GRAVES: Well, I understand.

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2 Sure.

3 WITNESS CADIEUX: And to us, when we look at
4 the Act, I mean, this is - - clearly when we look at Track A
5 versus Track B, this is clearly the type of competition that
6 Congress wanted to encourage. And we are out there trying
7 to make it happen. But we think it is implicit when you
8 look at those sections that there is an understanding that
9 this is going to take some time.

10 I mean there also is - - you asked about if I
11 think the process is being gamed. It is always very
12 difficult to really have a good handle on to what extent is
13 the process being gamed or not. It is very difficult to get
14 back. You don't have that direct, you know, information to
15 really have a good fix on that. So you don't really know
16 what kind of case you can make when you come into the
17 regulator. And while you are off fighting that, you know,
18 what is the business relationship going to be?

19 So those, I mean, as a practical matter,
20 those are the judgments we have had to make. But they're
21 more than judgments. I mean, we have - - In our view they
22 are just absolute business necessities if we are going to
23 get critical mass to be able to get into a position to
24 provide service. I mean, to us, timing to the market is
25 absolutely critical because of our capital intensive
basis. If we were a reseller, you know, there wouldn't be

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2 this heavy, heavy front-loaded financial pressure on it.

3 And that has - - It speaks volumes of how we have to look at
4 these decisions, whether to come to the regulator, whether
5 not to come to the regulator, whether to try to make this
6 work on a day-to-day incremental basis.

7 CHAIRMAN GRAVES: Okay. I appreciate it.

8 Thank you.

9 WITNESS CADIEUX: You're welcome.

10 CHAIRMAN GRAVES: Any other questions for Mr.
11 Cadieux before he sits down? And I appreciate your all's
12 indulgence in allowing me to ask Mr. Cadieux some questions.

13 Ms. Johns.

14 MS. JOHNS: Yes. Thank you.

15 Thank you, Your Honors. My name is Jennifer
16 Johns, and I'm the Director of Regulatory Affairs for Cox
17 Communications of Oklahoma. And I would like to thank you
18 for the opportunity to address you this afternoon on these
19 important issues and to address you for my first time.

20 I have no desire to take up your valuable
21 time by providing cumulative commentary on Southwestern
22 Bell's compliance with Section 271. I believe that Counsel
23 for AT&T and others in this case have already done an
24 admirable job of that.

25 But if Your Honors will indulge me for a few
brief moments, I would like to extend the ice cream for

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2 breakfast analogy presented by Counsel for AT&T. I would
3 like to focus for a moment on exactly what it is that I
4 would say Cox has to bring to this regulatory pot luck and
5 why Cox supports in full the report and recommendations by
6 ALJ Goldfield.

7 Clearly, as many of the other intervenors in
8 this case have pointed out, and as the ALJ Goldfield pointed
9 out in his report and recommendations, Section 271(c)(1)(A)
10 of the Telecommunications Act, which is called, "Presence
11 of a Facilities-Based Carrier," requires Southwestern Bell
12 to show that it has entered into an approved interconnection
13 agreement with at least one unaffiliated competing provider
14 of facilities-based service who is serving both residential
15 and business customers. And we have heard a lot of talk
16 today about the fact that Brooks, while it is serving some
17 business customers, is not serving residential customers
18 over its own facilities at this point.

19 This is where Cox makes its contribution to
20 the regulatory pot luck. Cox is the only facilities-based
21 carrier participating in this proceeding that is positioned,
22 either now or in the near term, to provide both business and
23 residential service, either predominantly or exclusively,
24 over its own facilities. Cox's facilities currently cover
25 more than 95 percent of the residences in Oklahoma City and
a substantial number of the businesses as well.

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2 COMMISSIONER APPLE: Give me that number
3 again. Tell me that again.

4 MS. JOHNS: 95 percent of the residences in
5 Oklahoma City are passed by Cox's facilities.

6 COMMISSIONER APPLE: Oh, passed by. Okay.

7 MS. JOHNS: Yes.

8 CHAIRMAN GRAVES: Their penetration isn't
9 quite that high.

10 MS. JOHNS: We wish.

11 COMMISSIONER APPLE: That is pretty good.

12 MS. JOHNS: As a potential facilities-based
13 carrier, Cox filed a request for interconnection with
14 Southwestern Bell on October 23rd of last year. And because
15 we were in the midst of our interconnection negotiations
16 with Southwestern as this proceeding heated up, we felt
17 constrained not to provide a witness in this proceeding.

18 On April 1st, we were still unable to reach
19 agreement on some critical terms in the interconnection
20 negotiations, so we filed an application for arbitration.
21 Since then we have filed a motion to have that application
22 withdrawn, which the Commission - - or which ALJ Goldfield
23 will be considering tomorrow on the Motions Docket.

24 CHAIRMAN GRAVES: And the reason for the
25 withdrawal is?

MS. JOHNS: Is because we have since then

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2 executed or signed our interconnection agreement with
3 Southwestern Bell. We have agreed to final terms. And,
4 obviously, we are thrilled about that. But that is only the
5 first step in the process. Obviously, the Commission hasn't
6 yet reviewed the interconnection agreement. It hasn't been
7 implemented at this point. And there is no determination
8 yet that the rates contained in the agreement are cost
9 based.

10 In that regard, I would like to address one
11 of the points that you made, Commissioner Graves, earlier
12 about why nobody has asked for a generic cost proceeding
13 before this Commission. Cox intends to do just that, and in
14 fact has drafted an application for this Commission to
15 initiate a generic cost docket. And we hope to file that in
16 the near term.

17 So, basically, Cox's position is that
18 Southwestern's request is premature in light of the fact
19 that Brooks is not currently serving residential subscribers
20 over its own facilities. And Cox certainly hasn't had the
21 opportunity to do that either, having just filed its
22 interconnection agreement last week with the Commission.

23 And, you know, we are concerned that
24 Southwestern Bell continue to have the incentive to work
25 with the carriers in implementing these interconnection
agreements. And we are concerned that if they're granted

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2 the authority to provide long distance service in region,
3 they will lose a large measure of that incentive.

4 VICE CHAIRMAN ANTHONY: What if we think they
5 have met the fourteen points on the checklist? Do you think
6 we would have the prerogative to withhold it in order to
7 allow leverage so that they would have to cooperate with
8 you?

9 MS. JOHNS: Well, I would address that issue
10 in a similar way that Counsel for AT&T and Sprint addressed
11 it, that they haven't met the threshold requirement, first
12 of all, that there is a facilities-based provider providing
13 service over - - predominantly over its own facilities to
14 both residential and business customers.

15 VICE CHAIRMAN ANTHONY: Oh, you dodged my
16 question. But that's okay. Let's go on.

17 COMMISSIONER APPLE: Well, while we are on
18 this subject, I have been bothered a little bit by the
19 comparison of - - is it apples to oranges, the two separate
20 issues of the application that Southwestern Bell currently
21 has versus their requirements to negotiate with parties
22 wanting to enter into the local exchange business. I see
23 them as two totally separate. And I'm a little puzzled
24 about the incentive factor being impacted one way or the
25 other on the application.

But I only say this, because I have spent a

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2 great deal of time thinking about this, and where it will
3 lead, and what our responsibilities are. But relative to
4 the accountability factor, I feel very strongly about this,
5 and I think everyone that has had a conversation with me
6 knows fully how I understand that once someone enters into
7 a agreement and makes a commitment to do something, the
8 highest standard of measurement I intend to apply, and the
9 fact that we have contempt powers, and we have fining powers
10 to see that anyone that is not acting in good faith and at
11 least on a reasonable time frame.

12 So I would like to address that, because it
13 has come up with several what is the incentive. Well, let
14 me tell you, I feel very strongly about incentive. And I
15 think my colleagues agree, too, that we are not going to sit
16 here and caretake over indifference and stonewalling. So I
17 just see them separate. But I wanted you to at least hear
18 collectively my thinking on that. And let that be a warning
19 that we will not tolerate any manipulation of the agreements
20 once they're entered into and we are expecting them to be
21 met in a professional aggressive manner to showcase Oklahoma
22 commitment.

23 MS. JOHNS: We appreciate that, Your Honor,
24 and we hope we don't have to hold you to it.

25 In any event, the bottom line for Cox is that
at this regulatory pot luck the proof is in the pudding.

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2 Cox has no desire, at this point anyway, to malign
3 Southwestern Bell or question its commitment to honor the
4 terms of the interconnection agreement that we have just
5 entered into. But the mere existence of the agreement with
6 a facilities-based carrier is not enough. Southwestern Bell
7 must demonstrate that it has fulfilled the promise of this
8 agreement. And regardless of whether it intends to do so in
9 the future, clearly it hasn't done so yet.

10 So, as I just said, Cox believes that it
11 would be grossly premature for the Commission to recommend
12 that Southwestern be granted in-region authority to provide
13 long distance services at this point. Thank you very much.

14 COMMISSIONER APPLE: Thank you, Ms. Johns.

15 CHAIRMAN GRAVES: Thank you, Ms. Johns.

16 Mr. Moon.

17 MR. MOON: Thank you, Commissioners. And may
18 it please the Commission, Southwestern Bell fails the
19 requirements of 271(c) because, first of all, it failed to
20 prove any facts to support any other determination.

21 Second of all, even if the allegations of
22 facts made by Southwestern Bell are taken as proof of the
23 existence of those facts, Southwestern Bell still fails the
24 requirements of Section 271(c).

25 Southwestern Bell cannot be granted interLATA
authority in this proceeding, or the Commission cannot

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2 recommend that it be granted interLATA authority in this
3 proceeding, because it failed to prove any facts that would
4 support that type of recommendation.

5 The FCC in making its determination states
6 that - - it has be said by the FCC, "A crucial element of
7 that determination is whether the requirements of Section
8 271(c) have in fact been satisfied."

9 Under the structure of Section 271,
10 consultation with the state commissions regarding a Bell
11 Operating Company's satisfaction of the Section 271(c)
12 requirements is an integral part of the FCC's overall
13 determination.

14 Now the FCC, and the Department of Justice
15 for that matter, will rely substantially upon the facts that
16 have been developed, and litigated and are in the record at
17 the state level when they make their determination.

18 Now to comply with Section 271's consultation
19 requirements that are directed to the state commissions, and
20 for this Commission's compliance with Oklahoma Rules, its
21 own Rules of Practice and Article 9 of the Constitution, the
22 recommendations that this Commission gives to the FCC in its
23 consultations must be supported by a substantial evidentiary
24 basis contained in the record in this docket, because for a
25 Commission adjudication a sufficient evidentiary basis means
substantial evidence in the record, according to the

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2 applicable constitutional provision that governs this
3 Commission's adjudications. And this docket, PUD 97-64, is
4 an adjudication, because it is clearly not a rulemaking in
5 which evidentiary requirements need not be strictly adhered
6 to.

7 In fact, if you look at the Oklahoma APA
8 which defines the rule, it expressly excludes this type of
9 procedure that we are doing here where the Commission is
10 determining whether to grant approval or permission for an
11 entity that it regulates permission to do something. That
12 is strictly excluded from the definition of the rule.

13 This docket is also different if any
14 comparisons are thought towards a notice of inquiry-type of
15 proceeding, or some other type of investigative-type of
16 proceeding that this Commission has opened in the past.

17 First of all, a notice of inquiry does not
18 result in final agency action. PUD 97-64 will result in
19 final agency action, an order directed to the FCC, not
20 ordering them, but it will be in the form of an order.

21 But second of all, and probably more
22 significant, a notice of inquiry or a similar type of
23 evidentiary proceeding historically, when it has been done
24 here at the Commission, has not fit the definition of an
25 individual proceeding as that term, individual proceeding,
is defined in the APA, Oklahoma APA. And the way it defines

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2 individual proceeding in Title 75, Section 250.37, quote,
3 "The formal process employed by an agency having
4 jurisdiction of law to resolve issues between parties,
5 issues of law or fact."

6 CHAIRMAN GRAVES: Is that Article 2 of the
7 APA?

8 MR. MOON: No, that is Article 1.

9 CHAIRMAN GRAVES: It is in Article 1.

10 MR. MOON: It is in Article 1, so it does
11 apply to this Commission.

12 CHAIRMAN GRAVES: Right. Okay.

13 MR. MOON: Now historically, as I said, this
14 Commission's notice of inquiry-type of dockets did not fit
15 that definition of individual proceeding. If they have, or
16 if in the future one does, or if this one is deemed some
17 type of a notice of inquiry, it does fit that definition of
18 individual proceeding. And since our Commission - - your
19 Commission Rules do not define what an adjudication is, we
20 have to look to the statutory law to see how the legislature
21 has defined an adjudication. And this, therefore, is an
22 adjudication, because it fits. It is a docket that has been
23 opened to resolve issues in dispute, issues of law and fact,
24 between parties.

25 Also in the ALJ's Report at page 2, he noted,
the ALJ noted in his report, that PUD 97-64, this docket,

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2 was initiated to comply with the FCC's and the DOJ's
3 recommendation that a full evidentiary hearing be conducted,
4 and that thereafter the record in this cause will be
5 submitted to them for their evaluation. And a full
6 evidentiary hearing requires or entails an adjudication, not
7 - - I believe you cannot have an evidentiary hearing that
8 is based upon comments and hearsay statements. And pursuant
9 to this Commission's own rule where this is addressed,
10 Commission Rule of Practice 13-3, "Adjudicatory hearings are
11 to be in the form of evidentiary hearings where parties have
12 the right to examine and cross examine witnesses."

13 And moreover, that same provision mandates
14 that this Commission adhere to the Rules of Evidence that
15 apply to District Courts for this state. Now it provides an
16 exception where this Commission can relax those Rules of
17 Evidence if it would be in the public interest to do so.
18 Now I think the ALJ relaxed those Rules of Evidence without
19 making any determination that it would be in the public
20 interest to do so. In fact, the public interest would be
21 not in any relaxation of the Rules of Evidence, but because
22 the FCC is going to rely so substantially on this
23 Commission's evidentiary record, the public interest would
24 be in strict adherence to those Rules of Evidence in order
25 that they can have reliable facts to base their decision
upon.

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2 For further support, our own Oklahoma Supreme
3 Court in State, ex-rel. v. Blankenship - - Excuse me.
4 Strike that - - State ex-rel. Blankenship v. Freeman, 440
5 P.2d 744 held in the context of this Commission's
6 adjudication procedures, this is a quote, "Facts
7 to which the law is to be applied in the process of
8 adjudication are called adjudicative facts. These are facts
9 about the parties and they must be ascertained from formal
10 proof."

11 VICE CHAIRMAN ANTHONY: Is that the case
12 where one of the Commissioners was removed from office?

13 MR. MOON: It was a 1968 case.

14 VICE-CHAIRMAN ANTHONY: That is all right.
15 It is part of the law.

16 MR. MOON: Okay. The Administrative Law
17 Judge improperly, and over the objections of the Attorney
18 General and several other parties, admitted into the record
19 as evidence Exhibit Number 87. And that exhibit contains
20 Southwestern Bell's affidavits, interconnection agreements,
21 Statement of Terms and Conditions, among other things.

22 Now as to the Statement of Terms and
23 Conditions, it has absolutely no relevancy. In fact, the
24 ALJ in his report determined that the Statement of Generally
25 Available Terms that has been offered into the record has no
relevancy in this proceeding because of the fact we are on